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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON, WI 53701-1497

EXAMINER

SALTARELLI, DOMINIC D

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/292,275
Filing Date: April 15, 1999
Appellant(s): MANKOVITZ, ROY J.

Mankovitz, Roy J.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 15, 2008 appealing from the Office action mailed April, 17, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,438,355	PALMER	8-1995
5,382,970	KIEFL	1-1995

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5,410,326	GOLDSTEIN	4-1995
4,955,070	WELSH ET AL	9-1990
5,583,763	ATCHESON ET AL	12-1996
5,553,123	CHAN ET AL	9-1996
5,724,521	DEDRICK	3-1998
5,860,136	FENNER	1-1999
5,155,762	CROQUET ET AL	10-1992

(9) Grounds of Rejection

The following grounds of rejection are applicable to the appealed claims:

Claims 78-82, 92, 93, 95, 96, 102-104, 106-110, 117-122, 124-130, 133-137, 160, and 161 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer (5,438,355, of record) in view of Kiefl (5,382,970, of record) and Goldstein (5,410,326, of record).

Regarding claim 78, Palmer discloses a method of providing supplemental information about a broadcast, the method comprising:

receiving, at a portable, hand-held electronic device, a request for supplemental information associated with the broadcast (col. 3 line 63 - col. 4 line 9);

establishing a connection to a remote database through a communications interface (col. 3 line 63 - col. 4 line 9);

transferring the information indicative of the broadcast stored in the memory to the remote database (col. 3 line 63 - col. 4 line 9) such that the remote database correlates the information indicative of the broadcast to the

broadcast to identify the supplemental information associated with the broadcast and receiving the supplemental information from the remote database (col. 4, lines 10-37).

Palmer fails to disclose providing a portable, hand-held electronic device which includes the user control, memory, communications interface, and a clock outputting time-of-day information, wherein the stored time-of-day information from the clock corresponds to the time at which the request is received, and communicating the supplemental information using the hand-held electronic device.

In an analogous art, Kiefl discloses a portable, hand-held electronic device (fig. 1, personal data meter, col. 9, lines 27-35) which includes a memory (fig. 2, memory 28), communications interface (fig. 2, phone control, modem, and cellular phone 31 and 32), and a clock outputting time-of-day information (fig. 2, clock 26), that is used to report back time-of-day information indicating what programming a viewer has watched (col. 6, lines 38-51). This provides a reporting device which has the benefit of being portable and usable with any television (or radio, see col. 8 line 54 - col. 9 line 4) source, requiring no physical connection to the television or other special equipment (col. 3, lines 19-36 and col. 9, lines 28-35).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Palmer to include a portable, hand-held electronic device which includes the memory, communications interface, and a

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clock outputting time-of-day information, wherein the information indicative of the broadcast includes time-of-day information from the clock, as taught by Kiefl, for the benefit of utilizing a stand alone device which is portable and not limited to use with any one particular television and requires no additional or special equipment to function. This obviates the need for specific codes to be associated with the broadcast itself, the system of Palmer continues to function in its original form in delivering supplemental content, it is simply broadened to be more widely applicable when modified in view of Kiefl. Because the system disclosed by Palmer is concerned with retrieval of supplemental content that corresponds not only to a program, but that the granularity of the information is applicable down to portions of the program (Palmer, col. 3, lines 5-10), the time of day information is associated specifically with when the user makes to the request of supplemental content, in order to specify which particular portion of the program the user was viewing when the request for supplemental content was made.

Palmer and Kiefl fail to disclose the portable, hand-held electronic device also includes the user control and communicating the supplemental information using the hand-held electronic device.

In an analogous art, Goldstein discloses a portable hand-held electronic device which includes a user control (fig. 1, remote control 5) and a screen for displaying supplemental information associated with programming (fig. 6A). Said portable hand-held electronic device which not only controls diverse electronic

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devices but also reports back customer interest regarding advertisements and interactive features (col. 27 line 18 - col. 28 line 55).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Palmer and Kiefl to include a user control on the portable hand-held electronic device, as taught by Goldstein, for the benefit of increasing the usefulness of said device through the addition of user control functionality (channel and volume change, interactive features, etc...) and convenient delivery of additional content.

Regarding claim 79, Palmer, Kiefl, and Goldstein disclose the method of claim 78, wherein the broadcast includes a radio (Kiefl, col. 8 line 54 - col. 9 line 4 and Goldstein, col. 27, lines 41-52) or TV program (Palmer, col. 2 line 59 - col. 3 line 4, Kiefl, col. 5, lines 11-32, and Goldstein, col. 27, lines 41-52).

Regarding claim 80, Palmer, Kiefl, and Goldstein disclose the method of claim 78, wherein the broadcast includes a musical selection (in the instance of radio programming, Goldstein, col. 27, lines 41-52).

Regarding claim 81, Palmer, Kiefl, and Goldstein disclose the method of claim 78, wherein the broadcast includes an advertisement (Goldstein, col. 27, lines 41-52).

Regarding claim 82, Palmer, Kiefl, and Goldstein disclose the method of claim 78, but fail to disclose the hand-held electronic device further includes a pushbutton control.

However, Palmer and Kiefl both show that it was known and common practice at the time to include push buttons on remote control devices (Palmer, col. 3 line 63 - col. 4 line 2, shown as 'response buttons 56' in fig. 2 and Kiefl, col. 5, lines 11-32, fig. 1, push buttons 11). The user control of Goldstein is disclosed as a touch screen, however touch screens are much more vulnerable to technical errors, and thus it would have been obvious at the time to include at least one pushbutton on the user control in addition to the touch screen to provide a means for user input that is more reliable should the touch screen lose function.

Regarding claims 92 and 117, Palmer discloses a system for providing supplemental information to a user about a broadcast, the system comprising:

- a memory located remotely from a database for storing supplemented information about a broadcast (fig. 1, database 20, col. 2, lines 45-58 and col. 4, lines 10-37) which stores information indicative of the broadcast in response to activation of a user control (col. 3 line 63 - col. 4 line 9);

- a communications interface which establishes a connection to the remote database (col. 3 line 63 - col. 4 line 9);

- wherein the information indicative of the broadcast is communicated from the memory to the remote database as a user request for supplemental

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information so that the supplemental information associated with the broadcast is identified and provided to the user (col. 4, lines 10-37).

Palmer fails to disclose a user-operable device located remotely from the database which includes the user control, memory, communications interface, and a clock outputting time-of-day information, wherein the information indicative of the broadcast includes time-of-day information from the clock, and thus the database stores the supplemental information as a function of the time-of-day, wherein the supplemental information associated with the broadcast is communicated to the device.

In an analogous art, Kiefl discloses a user operable device (fig. 1, personal data meter, col. 9, lines 27-35) which includes a memory (fig. 2, memory 28), communications interface (fig. 2, phone control, modem, and cellular phone 31 and 32), and a clock outputting time-of-day information (fig. 2, clock 26), that is used to report back time-of-day information indicating what programming a viewer has watched (col. 6, lines 38-51). This provides a reporting device which has the benefit of being portable and usable with any television (or radio, see col. 8 line 54 - col. 9 line 4) source, requiring no physical connection to the television or other special equipment (col. 3, lines 19-36 and col. 9, lines 28-35).

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Palmer to include a user-operable device which includes the memory, communications interface, and a clock outputting

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time-of-day information, wherein the information indicative of the broadcast includes time-of-day information from the clock, as taught by Kiefl, for the benefit of utilizing a stand alone device which is portable and not limited to use with any one particular television and requires no additional or special equipment to function. Because the information being reported by the device includes time-of-day information, the remote database stores the supplement content as a function of the time-of-day, since the coded information sent upstream is what the database utilizes to locate desired supplemental content (Palmer, col. 3 line 63 - col. 4 line 18). This obviates the need for specific codes to be associated with the broadcast itself, the system of Palmer continues to function in its original form in delivering supplemental content, it is simply broadened to be more widely applicable when modified in view of Kiefl. Because the system disclosed by Palmer is concerned with retrieval of supplemental content that corresponds not only to a program, but that the granularity of the information is applicable down to portions of the program (Palmer, col. 3, lines 5-10), the time of day information is associated specifically with when the user makes to the request of supplemental content, in order to specify which particular portion of the program the user was viewing when the request for supplemental content was made.

Palmer and Kiefl fail to disclose the user-operable device also includes the user control and wherein the supplemental information associated with the broadcast is communicated to the device.

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In an analogous art, Goldstein discloses a user-operable device which includes a user control (fig. 1, remote control 5) wherein the supplemental information associated with the broadcast is communicated to the device. Said portable hand-held electronic device which not only controls diverse electronic devices but also reports back customer interest regarding advertisements and interactive features (col. 27 line 18 - col. 28 line 55).

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Palmer and Kiefl to include the user control on the user-operable device, as taught by Goldstein, for the benefit of increasing the usefulness of said device through the addition of user control functionality (channel and volume change, interactive features, etc...) and convenient delivery of additional content.

Regarding claim 93, Palmer, Kiefl, and Goldstein disclose the system of claim 92, wherein the database stores supplemental information broadcast as a function of the time of day (as described above), the clock in the in the user operable device outputs time information (Kiefl, col. 6, lines 38-43), and the time is communicated to the database to identify the supplemental information to be provided to the user (Kiefl teaches reporting channels watched and at what times the channels were watched, col. 6, lines 38-64, and Palmer teaches using reported information regarding viewed programming to locate supplemental content of interest, col. 4, lines 10-38).

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Palmer, Kiefl, and Goldstein fail to disclose including date information as well.

Examiner takes official notice that indexing content according to date as well as time of day is notoriously well known in the art, as indexing according to date provides for much larger databases to be used than one in which only the content of a single day is stored.

Therefore, it would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Palmer, Kiefl, and Goldstein to include date information as well, for the benefit of allowing the database which stores the supplemental content to span several days worth of content.

Regarding claim 95, Palmer, Kiefl, and Goldstein disclose the system of claim 92, but fail to disclose the memory is removable from the device for transport to a different location for communication the time-of-day information to the database.

Examiner takes official notice that the use of removable memory devices is notoriously well known in the art. Sharing or uploading information stored in a removable memory device simplifies a user-operable device by removing the need for a communication module. Often, the device used to transmit the information found in removable memory modules is a home computer, which often are equipped with data modems for network communications and a compatible data interface for receiving the memory module.

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Palmer, Kiefl, and Goldstein to include the memory is removable from the device for transport to a different location for communication the time-of-day information to the database, simplifying the user-operable device by removing the need for a communication module.

Regarding claim 96, Palmer, Kiefl, and Goldstein disclose the system of claim 92, wherein the device forms part of a telephone (Kiefl, fig. 2, cellular phone 31).

Regarding claim 102, Palmer, Kiefl, and Goldstein disclose the system of claim 92, wherein the communications interface is configured to wirelessly connection to a telephone network (Kiefl, fig. 2, cellular phone 31).

Regarding claim 103, Palmer, Kiefl, and Goldstein disclose the system of claim 92, wherein the controller is configured to store identification information in the memory and communicate the user identification information to the database (Palmer, col. 4, lines 10-37, specifically lines 31-37).

Regarding claim 104, Palmer, Kiefl, and Goldstein disclose the system of claim 103, further including data processor means for analyzing the identification

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information to determine a number of requests for the supplemental information (Palmer, col. 4, lines 31-37).

Regarding claim 106, Palmer, Kiefl, and Goldstein disclose the system of claim 92, wherein the device further includes a display, and wherein the controller is configured to provide the supplemental information through the display (user interactions with the user-operable device is performed through interacting with the displayed menus and graphics shown in the display, as shown in figs. 2A-9 in Goldstein, see for example, col. 10 line 35 - col. 11 line 26, see also fig. 6A).

Regarding claim 107, Palmer, Kiefl, and Goldstein disclose the system of claim 92, but fail to disclose data processor means for erasing time of day information from the memory in response to a request from the database.

Examiner takes official notice that means for erasing stored data from memory is notoriously well known in the art, as there are many reasons erasing stored data from memory, first and foremost is the need to free memory space in order to make room for new data. Providing a user with manual means for erasing data allows a user the freedom and flexibility in determining which data is no longer wanted, and automatic means for purging obsolete or expired data is also common.

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It would have been obvious at the time to a person of ordinary skill in the art to modify the system of Palmer, Kiefl, and Goldstein to include data processor means for erasing time of day information from the memory in response to a request from the database, for the benefit of freeing memory space in order to make room for new data.

Regarding claim 108, Palmer, Kiefl, and Goldstein disclose the system of claim 92, but fail to disclose the controller is configured to correlate the clock in the device with a second clock in the database.

Examiner takes official notice that it is notoriously well known in the art to use master clocks outputting clock signals to coordinate remote clocks in order to synchronize the remote clocks with the master clock. This maintains a synchronized state between the remote clocks and the primary clock, which maintains accuracy between sites for such purposes as data and service coordination.

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Palmer, Kiefl, and Goldstein to include the controller is configured to correlate the clock in the device with a second clock in the database, providing the benefit of increased accuracy in reported information, as the time of day information output from each clock has been synchronized.

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Regarding claim 109, Palmer, Kiefl, and Goldstein disclose the system of claim 92, wherein the supplemental information includes a copy of the broadcast (Palmer discloses the information provided includes details regarding advertised products or services and any other information an advertiser wishes to convey, col. 3, lines 25-32), in the form of text (a facsimile transmission).

Regarding claim 110, Palmer, Kiefl, and Goldstein disclose the system of claim 92, wherein the supplemental information includes the price of a product or a service, and an availability of the product or the service (Palmer, col. 3, lines 25-32 and col. 4, lines 22-27).

Regarding claim 118, Palmer, Kiefl, and Goldstein disclose the device of claim 117, but fail to disclose the control is a pushbutton.

However, Palmer and Kiefl both show that it was known and common practice at the time to include push buttons on remote control devices (Palmer, col. 3 line 63 - col. 4 line 2, shown as 'response buttons 56' in fig. 2 and Kiefl, col. 5, lines 11-32, fig. 1, push buttons 11). The user control of Goldstein is disclosed as a touch screen, however touch screens are much more vulnerable to technical errors, and thus it would have been obvious at the time to include at least one pushbutton on the user control in addition to the touch screen to provide a means for user input that is more reliable should the touch screen lose function.

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Regarding claims 119 and 120, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the broadcast includes a radio (Kiefl, col. 8 line 54 - col. 9 line 4 and Goldstein, col. 27, lines 41-52) or TV broadcast [advertisement] (Palmer, col. 2 line 59 - col. 3 line 4, Kiefl, col. 5, lines 11-32, and Goldstein, col. 27, lines 41-52).

Regarding claim 121, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the broadcast includes a musical selection, and further wherein the supplemental information is associated with the musical selection (in the instance of radio programming, Goldstein, col. 27, lines 41-52).

Regarding claim 122, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the controller is further configured to communicate to the database the time of day information (as described above), the clock in the in the user operable device outputs time information (Kiefl, col. 6, lines 38-43), and the time is communicated to the database to identify the supplemental information to be provided to the user (Kiefl teaches reporting channels watched and at what times the channels were watched, col. 6, lines 38-64, and Palmer teaches using reported information regarding viewed programming to locate supplemental content of interest, col. 4, lines 10-38).

Palmer, Kiefl, and Goldstein fail to disclose including date information as well.

Examiner takes official notice that indexing content according to date as well as time of day is notoriously well known in the art, as indexing according to date provides for much larger databases to be used than one in which only the content of a single day is stored.

Therefore, it would have been obvious at the time to a person of ordinary skill in the art to modify the device disclosed by Palmer, Kiefl, and Goldstein to include date information as well, for the benefit of allowing the database which stores the supplemental content to span several days worth of content.

Regarding claim 124, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the supplemental information is provided in print form (Palmer teaches sending facsimile transmissions for supplemental information, col. 4, lines 10-37).

Regarding claims 125 and 129, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the established a connection comprises a [wireless] telephone connection (Kiefl, fig. 2, cellular phone 31).

Regarding claim 126, Palmer, Kiefl, and Goldstein disclose the device of claim 125, wherein the supplemental information is provided through the telephone connection (Palmer teaches sending facsimile transmissions for supplemental information, col. 4, lines 10-37).

Regarding claim 127, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the auxiliary information is in the form of text information (Palmer teaches sending facsimile transmissions for supplemental information, col. 4, lines 10-37) provided on the display (on the display 10, see Goldstein, figs. 1 and 6).

Regarding claim 128, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the memory is configured to store the supplemental information (Goldstein, fig. 10, memory 90, which stores downloaded content related to programming, col. 12, lines 44-47, such as advertisement content, see figs. 6-9).

Regarding claims 130 and 160, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the controller is further configured to communicate identification information to the database (Palmer, col. 4, lines 10-37, specifically lines 31-37).

Regarding claim 133, Palmer, Kiefl, and Goldstein disclose the device of claim 117, further comprising a display configured to display the supplemental information, wherein the display allows sorting and selection of the supplemental information (user interactions with the user-operable device is performed through

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interacting with the displayed menus and graphics shown in the display, as shown in figs. 2A-9 in Goldstein, see for example, col. 10 line 35 - col. 11 line 26).

Regarding claim 134, Palmer, Kiefl, and Goldstein disclose the device of claim 117, but fail to disclose the controller is further configured to erase the time-of-day information from the memory.

Examiner takes official notice that means for erasing stored data from memory is notoriously well known in the art, as there are many reasons erasing stored data from memory, first and foremost is the need to free memory space in order to make room for new data. Providing an automatic means for purging obsolete or expired data is common.

It would have been obvious at the time to a person of ordinary skill in the art to modify the device of Palmer, Kiefl, and Goldstein to include the controller is further configured to erase the time-of-day information from the memory, for the benefit of freeing memory space in order to make room for new data.

Regarding claim 135, Palmer, Kiefl, and Goldstein disclose the device of claim 117, but fail to disclose the controller is further configured to correlate the close with a second clock associated with the database.

Examiner takes official notice that it is notoriously well known in the art to use master clocks outputting clock signals to coordinate remote clocks in order to

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synchronize the remote clocks with the master clock. This maintains a synchronized state between the remote clocks and the primary clock, which maintains accuracy between sites for such purposes as data and service coordination.

It would have been obvious at the time to a person of ordinary skill in the art to modify the device disclosed by Palmer, Kiefl, and Goldstein to include the controller is further configured to correlate the close with a second clock associated with the database, providing the benefit of increased accuracy in reported information, as the time of day information output from each clock has been synchronized.

Regarding claim 136, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the supplemental information includes a copy of the broadcast itself (Palmer discloses the information provided includes details regarding advertised products or services and any other information an advertiser wishes to convey, col. 3, lines 25-32, therefore the supplemental information may include a copy of the broadcast itself).

Regarding claim 137, Palmer, Kiefl, and Goldstein disclose the device of claim 117, wherein the supplemental information includes the price of a product or a service (Palmer, col. 3, lines 25-32 and col. 4, lines 22-27).

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Regarding claim 161, Palmer, Kiefl, and Goldstein disclose the device of claim 160, wherein the database is configured to analyze the identification information to determine a number of user requests for the supplemental information (Palmer, col. 4, lines 31-37).

Claims 94, 105, 123, and 132 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer, Kiefl, and Goldstein, as applied to claims 92 and 117 above, and further in view of Welsh et al. (4,955,070, of record) [Welsh].

Regarding claims 94 and 123, Palmer, Kiefl, and Goldstein disclose the system and device of claims 92 and 117, but fail to disclose the supplemental information is stored as a function of station identification, the device further includes a broadcast station tuner for deriving the station identification, and the station identification information is communicated to the database along with the time of day to identify the supplemental information to be communicated to the device.

In an analogous art, Welsh discloses a user-operable device which includes a broadcast station tuner for deriving station identification information (fig. 1, tuner circuit 16, col. 3, lines 60-66) which is reported back to a central database (col. 2, lines 3-23), for the benefit of automatic monitoring of broadcast content (the user is not required to input the station or time manually, col. 1, lines 44-59).

It would have been obvious at the time to a person of ordinary skill in the art to modify the system and device disclosed by Palmer, Kiefl, and Goldstein to include a broadcast station tuner for deriving station identification, and the station identification information is communicated to the database (along with the time of day), as taught by Welsh, for the benefit of automatic monitoring of broadcast content, negating the need for a user to manually input station identification information to the user-operable device. The database stores supplemental information about a radio or TV broadcast also as a function of station identification as a matter of necessity, because the time alone is insufficient to determine what a user is watching in order to retrieve the desired supplemental content.

Regarding claims 105 and 132, Palmer, Kiefl, Goldstein, and Welsh disclose the system and method of claims 94 and 123, wherein the station identification information comprises the station call letters (of radio stations, Kiefl, col. 8 line 66 - col. 9 line 2).

Claims 97-101 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palmer, Kiefl, and Goldstein as applied to claim 92 above, and further in view of Atcheson et al. (5,583,763, of record) [Atcheson].

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Regarding claim 97, Palmer, Keifl, and Goldstein disclose the system of claim 92, but fail to disclose the supplemental information relates to at least one of the musical selections.

In an analogous art, Atcheson discloses a database remote from a user for storing a plurality of musical selections which are requested and downloaded by a user (col. 3, lines 24-63), providing the benefit of a music download service which allows users to select specifically which musical selections they wish to hear.

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Palmer, Kiefl, and Goldstein to include a database remote from the user for storing a plurality of musical selections, as taught by Atcheson, for the benefit of providing a music download service which allows users to select specifically which musical selections they wish to hear (a service which may be ordered by a user, Goldstein, col. 33, lines 58-68). The supplemental information relates to at least some of the selections because the supplemental information relates to content which is viewed or listened to by viewers, which includes the musical selections in the remote database.

Regarding claim 98, Palmer, Kiefl, Goldstein, and Atcheson disclose the system of claim 97, wherein the device includes a display (Goldstein, fig. 1) and means for playing a musical selection (Goldstein, fig. 10, 'sound generator'); and the controller is further configured to download the musical selection from the

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database to the device, play the musical selection (Atcheson, col. 3, lines 51-63) and display the supplemental information on the display (a 'service ordered by the user' which is ordered over and displayed on the user-operable device, Goldstein, col. 33, lines 58-68).

Regarding claim 99, Palmer, Kiefl, Goldstein, and Atcheson disclose the system of claim 98, but fail to disclose the supplemental information includes a name of the musical selection and an artist associated with the musical selection.

Examiner takes official notice that it is notoriously well known in the art to provide the name and performers of a musical selection, as users often wish to know what the name of a song and who performs it when listening.

It would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Palmer, Kiefl, Goldstein, and Atcheson to include a name of the musical selection and an artist associated with the musical selection, as this is the sort of information most often desired by users who listen to musical selections.

Regarding claims 100 and 101, Palmer, Kiefl, Goldstein, and Atcheson disclose the system of claim 98, wherein the memory is configured to store the musical selections and the supplemental information (illustrated in Kiefl, fig. 2, memory 28 and Goldstein, fig. 10, RAM 90).

(10) Response to Argument

The combination of Palmer, Kiefl, and Goldstein fails to teach, describe or suggest time of day information.

Appellant argues that the combination of Palmer, Kiefl, and Goldstein fail to disclose the claimed limitation of storing time of day information, wherein the time of day information corresponds to a time at which a request for the supplement information is received, by arguing that one of the embodiments disclosed by Kiefl for using Kiefl's disclosed system as a stand-alone user behavior monitor that disregards channels watched for fewer than 5 seconds (since channel surfing is not indicative of viewer interest in a particular channel) would somehow be incorporated into the modification of Palmer in view of Kiefl and thus does not teach storing time of day information as claimed. Appellant supports this assertion by stating the act of requesting content may take less than 5 seconds, and thus would not qualify as a time window which would be noted by Kiefl's channel monitor.

In response, the examiner has already addressed this argument in the advisory action which was mailed on June 27, 2008. Given that the Palmer disclosure clearly enables the retrieval of supplemental content in response to a single button press on a remote control (Palmer, col. 3 line 63 - col. 4 line 9), the feature disclosed by Kiefl regarding ignoring channel surfing behavior is considered by a practitioner of ordinary skill in the art, but simply not included as it is unrelated to the function of retrieving supplemental content as disclosed by

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Palmer. As argued previously, the advantageous feature of Keifl which would motivate one of ordinary skill in the art to modify Palmer is the time-stamping of button press instances to identify content being viewed, which would free Palmer from the limitation of being forced to include special codes in a broadcast stream. This reasoning is supported by the Keifl disclosure, who teaches his system is free from the constraints of special processing of a broadcast signal that Palmer suffers from (Keifl, col. 3, lines 19-36 and col. 9, lines 28-35), as Kiefl only needs to know the channel and time.

The combination of Palmer, Kiefl, and Goldstein fails to disclose
supplement information about a broadcast as claimed

Appellant argues that the combination of Palmer, Kiefl, and Goldstein do not disclose the claimed “supplemental information”, resting said argument upon the rather bold assertion that the examiner stated that the combination of Palmer and Kiefl fail to disclose the “supplemental information” as claimed and instead relied upon Goldstein to teach it.

In response, page 7 of the Final Office Action (reproduced above) states, regarding what Palmer and Kiefl fail to disclose:

“Palmer and Kiefl fail to disclose the portable, hand-held electronic device also includes the user control and communicating the supplemental information using the hand-held electronic device.”

Arguing that this assertion equates to stating that Palmer and Kiefl do not disclose the claimed “supplemental information” is inconsistent with the record.

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The examiner has established from the beginning that Palmer clearly teaches the claimed supplemental information (Palmer, col. 4, lines 10-37) and has never suggested otherwise.

The combination of Palmer, Kiefl, and Goldstein teaches away from the claimed invention

Here, appellant simply repeats the first argument regarding Kiefl's exclusion of short time periods, and no further elaboration by the examiner is necessary, having addressed this argument both in the advisory action mailed on June 27, 2008 and above.

The combination of Palmer, Kiefl, and Goldstein renders the prior art unsatisfactory for its intended purposes

Here, appellant simply repeats the first argument regarding Kiefl's exclusion of short time periods, and no further elaboration by the examiner is necessary, having addressed this argument both in the advisory action mailed on June 27, 2008 and above.

Claim 95

Regarding claim 95, applicant argues that the use of the Dedrick reference to justify the official notice taken regarding the use of removable memory devices is unsatisfactory, citing that Dedrick does not teach using a removable memory device to transport to a different location for communicating the time of day information to the data base.

In response, the official notice taken was that it was known to move data from one computer to another using a removable memory device. Citing that Dedrick has a different reason for using a removable memory device does not change the fact that the examiner demonstrated the use of removable memory devices was known. That the device to which the removable memory would be transferred to would be capable of communicating the time of day information was explained by the examiner, who stated that home computers were often equipped with such functionality, most often in the form of a data modem, which fits with Dedricks disclosure of moving data from “computer to computer, such as between office and home.”

Claim 103

Regarding claim 103, appellant argues that Palmer does not teach communicating identification information to the database along with request, pointing out that the cited section of Palmer does not explicitly disclose such a feature.

In response, Palmer more clearly expresses the inclusion of identification information in col. 3, lines 33-40. The included identification information are the console identification codes (CIC) that are associated with each program identification code (PIC) as each request for supplemental content is made (Palmer, col. 3 line 63 - col. 4 line 18).

Claims 104 and 161

Regarding claims 104 and 161, appellant argues that Palmer does not disclose analyzing identification information to determine a number of requests for supplemental content, arguing that Palmer does not explicitly disclose the calculation of a particular number of requests in the cited section.

In response the cited section points to the aggregation and statistical breakdown of received requests performed by the system. This meets the claimed limitation of analyzing identification information to determine a number of requests in the following manner.

First, each request is the combination of a CIC and PIC, information which identifies the console which made the request and information which points to the supplemental content. As these requests are received, they are each recorded in a database to enable the system to provide the cited “detailed data” at a point in the future. Once an aggregate of requests have been compiled, the system is then enabled to perform statistical breakdowns of the data to parse it into useful statistics for broadcasters and advertisers. For example, if a broadcaster is interested in knowing what channels were watched at what times (Palmer, col. 4, lines 31-37), the system calculates such a report by literally counting the number of requests for supplemental content that occurred for each channel and for each time. Each and every one of said counts represents a number of requests for supplemental content, and is calculated by analyzing identification information (the PICs and CICs), as claimed.

Claims 107 and 134

Regarding claims 107 and 134, appellant argues that the use of Fenner to justify the official notice taken regarding erasure of data is unsatisfactory, citing that Fenner does not disclose the delete record command comes from a database, as claimed.

In response, the official notice taken was that it was well known to erase data. The Fenner reference is provided to show that marking electronic records as deleted to make room for new records was known. That the command is sent from the database is merely one of the finite number of locations from which said command could originate. The feature itself is nominal and superfluous, and amounts to nothing more than the combining of prior art elements according to known methods to yield predictable results. It is known to delete content (as shown by Fenner), and it is known to send commands from one remote location to another (a feature central to the function of the Palmer disclosure, and the use of a two-way path for bidirectional communication is enabled by Goldstein). Thus the sending of a delete command from the database as claimed is a combination of known prior art elements that is obvious, predictable, and easily implemented by one of ordinary skill in the art.

Claims 109 and 136

Regarding claims 109 and 136, appellant argues that Palmer does not disclose providing a copy of the broadcast as supplement information, as claimed, citing that Palmer's supplemental information is *regarding* the broadcast content and not an actual copy.

In response, the appellant has not provided any sort of definition or disclosure as far as how a copy of a video broadcast can be provided in the form of text (as claimed) that would exclude Palmer's disclosure of sending in facsimile form, advertising content describing the same product that was advertised in a broadcast commercial. A copy of a video simply cannot be provided in text form as they are two different mediums. The text can only have in it descriptions of what was shown in the video to qualify as a copy, which is the approach taken by the examiner in applying Palmer to the claimed limitations.

Claims 94, 105, 123, and 132

Regarding claims 94, 105, 123, and 132, appellant argues that because the combination of Palmer, Keifl, and Goldstein does not disclose all of the claimed limitations of claims 92 and 117 (addressed above), the addition of the Welsh reference does not remedy the deficient rejections.

Accordingly, since this arguments rests upon the validity of the arguments applied to claims 92 and 117, which have been addressed above, no further comment by the examiner is necessary.

Claim 94

Regarding claim 94, appellant argues that Welsh does not teach sending time of day information along with the station identification information to identify supplemental content, and thus not all of the claimed limitation of claim 94 are met by the combination of Palmer, Kiefl, Goldstein, and Welsh.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, the Palmer reference has been modified in view of Kiefl to replace the PICs with more generic identifying information related to channel watched and the times when button presses take place. The Welsh reference further supplements this identifying information, which already includes time of day identifiers, with a station identifier as well.

Rejection of claims 97-101 under 35 U.S.C. 103(a)

Regarding claims 97-101, appellant argues that because the combination of Palmer, Keifl, and Goldstein does not disclose all of the claimed limitations of claim 92 (addressed above), the addition of the Atcheson reference does not remedy the deficient rejections.

Accordingly, since this arguments rests upon the validity of the arguments applied to claim 92, which have been addressed above, no further comment by the examiner is necessary.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

/Dominic D Saltarelli/

Examiner, Art Unit 2421

Conferees:

/John W. Miller/

Supervisory Patent Examiner, Art Unit 2421

/Scott Beliveau/

Supervisory Patent Examiner, Art Unit 2427